

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ELSEVIER INC., :

Plaintiff, :

-against- :

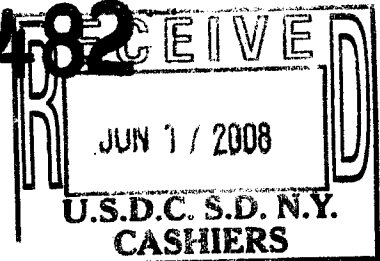
ENCYCLOPAEDIA BRITANNICA, INC., :

Defendant. :
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JUDGE DANIELS

08 Civ.

08 CIV 5482



COMPLAINT

Plaintiff Elsevier Inc. ("Elsevier"), by its undersigned attorneys, for its complaint against defendant Encyclopaedia Britannica, Inc. ("Britannica"), avers:

Nature of the Action

1. Elsevier is bringing this action to recover damages from Britannica (i) for infringement of the copyright in certain medical illustrations of the late Frank K. Netter, M.D., and/or (ii) for breach of a license agreement for the copyright on those medical illustrations.

Jurisdiction and Venue

2. The Court has subject matter jurisdiction over the first claim in this action because it arises under the Copyright Act, 17 U.S.C. § 101 et seq. This Court has subject matter jurisdiction over the second claim in this action pursuant to 28 U.S.C. § 1367 because it is so related to the

claim within the original jurisdiction of this Court that they form part of the same case or controversy within the meaning of Article III of the United States Constitution.

3. Upon information and belief, venue is proper in this District pursuant to 28 U.S.C. § 1391.

Parties

4. Elsevier is a corporation organized and existing under the laws of the State of New York with its principal place of business at 360 Park Avenue South, New York, New York.

5. Upon information and belief, Britannica is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 331 North LaSalle Street, Chicago, Illinois.

Background of this Action

6. The late Frank H. Netter, M.D. ("Netter"), was one of the foremost medical illustrators of the 20th Century. His works included The Atlas of Human Anatomy, which contained detailed and explicit drawings of the systems of the human body.

7. Ciba-Geigy Corporation ("Ciba-Geigy") received from the Register of Copyrights on September 29, 1989 United States Certificate of Copyright Registration No. TX002659439 for this work, as a work for hire ("Netter Copyright").

8. Upon information and belief, Ciba-Geigy changed its name to Novartis Pharmaceuticals Corporation ("Novartis").

9. By an agreement memorialized by letter dated August 4, 1997, Novartis licensed Britannica to use ninety seven plates derived from its copyrighted Atlas of Human Anatomy, for (i) the new edition of the Encyclopaedia Britannica CD-ROM, and (ii) up to 10,000 of its subscribers to its website. Britannica agreed to pay, and did pay, Novartis \$20,000 for this license. Upon information and belief, Britannica agreed to pay Novartis an additional license fee of \$5,000 for each additional 10,000 subscribers to its website.

10. On or about July 2000, Novartis transferred all of its right, title and interest in the Netter Copyright and the Britannica Agreement to Havas MultiMedia LLC ("Havas"). In October 2000, Havas changed its name to Icon Learning Systems LLC ("Icon").

11. On or about August 2005, Elsevier purchased Icon, and merged Icon into Elsevier. Elsevier therefore succeeded by operation of law to the rights of Icon in the Netter Copyright and the Britannica Agreement.

12. Despite the fact that subscribers to its website, upon information and belief, substantially exceeded the number licensed under the Britannica Agreement, Britannica did not pay Elsevier, or its predecessors in interest, any additional amounts under the Britannica Agreement.

FIRST CLAIM FOR RELIEF
(Copyright Infringement - 17 U.S.C. § 501)

13. Elsevier repeats the averments contained in paragraphs 1 through 12 as if set forth in full.

14. Elsevier owns the Netter Copyright and the United States Certificate of Copyright Registration for it.

15. The Netter Copyright is valid and enforceable.

16. Britannica has infringed the Netter Copyright in violation of 17 U.S.C. § 501.

17. Upon information and belief, Britannica willfully infringed the Netter Copyright.

18. Elsevier is entitled to recover all damages sustained as a result of Britannica's unlawful conduct including (i) Britannica's profits, or (ii) Elsevier's damages, or alternatively (iii) statutory damages.

SECOND CLAIM FOR RELIEF
(Breach of Contract)

19. Elsevier repeats the averments set forth in paragraphs 1 to 18 above with the same force and effect as if set forth in full.

20. The Britannica Agreement constitutes an enforceable contract between Britannica and Elsevier.

21. Britannica committed the first material breach of the Britannica Agreement by failing to pay additional royalties of \$5,000 for each additional 10,000 subscribers to its website.

22. Elsevier is entitled to recover damages for breach of contract from Britannica, in an amount to be determined by the trier of fact, measured by \$5,000 for each additional 10,000 subscribers to its website.

WHEREFORE, Elsevier demands judgment:

A. Awarding Elsevier its damages or Britannica's profits, or alternatively, at Elsevier's election, statutory damages, as a result of Britannica's infringement of the Netter Copyright;

B. Awarding Elsevier its damages for breach of the Britannica Agreement;

C. Awarding Elsevier its costs in this action, including its reasonable attorneys' fees pursuant 17 U.S.C. § 505; and

D. Granting such other and further relief as to this Court seems just and proper.

Dated: New York, New York
June 17, 2008

DUNNEGAN LLC

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